

**CITY OF BEAVERTON
STAFF REPORT AND RECOMMENDATION**

TO: Planning Commission

STAFF REPORT DATE: Wednesday, February 1, 2006

STAFF: Steven A. Sparks, AICP, Development Services Manager

SUBJECT: **TA 2004-0012 (TC-MU Commercial Restriction)**

REQUEST: Proposal to amend Development Code Section 20.20.30.2.D.3. to create an alternative retail trade use restriction that would allow individual retail use footprints to up to 90,000 square feet.

APPLICANT: Gramor Development, Inc.
19767 SW 72nd., Suite 100
Tualatin, OR. 97062

AUTHORIZATION: Ordinance 2050 (Development Code)

APPLICABLE CRITERIA: Ordinance 2050, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, February 8, 2006

RECOMMENDATION: Staff support the proposed text amendment application **TA 2004-0012** (TC-MU Commercial Use Restriction Amendment) and accompanying development agreement.

A. LEGISLATIVE HISTORY

The staff report prepared for the January 11, 2006 Planning Commission hearing summarizes the legislative history for the subject Development Code requirement. Staff incorporate the discussion contained in that report by reference in this report.

B. PROJECT HISTORY

The staff report prepared for the January 11, 2006 Planning Commission hearing summarizes the project history of the proposed Development Code text amendment and the new proposal for a development agreement. Staff incorporate the discussion contained in that report by reference in this report.

C. STAFF OVERVIEW OF PROPOSED TEXT AMENDMENT

Gramor Development Inc. (Gramor) is proposing a text amendment to Development Code Section 20.20.30.2.D.3.d. which will create an alternative to the current restriction limiting individual retail commercial uses to a maximum 50,000 square foot print unless it is on a site that is three (3) acres or less and surrounded on three (3) sides by public or private streets. That alternative would allow a property owner to enter into a development agreement with the City and not observe the size limitation for a retail use in the Town Center - Multiple Use (TC-MU) zone.

The staff report prepared for the January 11, 2006 Commission meeting identified that staff were “*opposed to the inclusion of the last sentence of subsection 2 of the proposed text*”. The applicant has submitted a letter dated January 13, 2006 amending the proposed text. The new text proposed by Gramor satisfies the objections raised in the prior staff report concerning the content of the subject last sentence of subsection 2.

The current proposed text amendment reads as follows, with the new text highlighted:

Section 20.20.30.2.D.3.

d. Individual uses larger than 50,000 square feet are not permitted except:

1. ~~where the site is~~ on those parcels which are less than three net acres in size as formed by a grid of public or private streets on all sides, or
2. When the City and the applicant have entered into a Development agreement pursuant to ORS 95.504 et. seq. which assures the City that the applicant’s proposal will be consistent with the Purpose for Multiple Use Districts set forth in 20.20.1 as more specifically applied in the TC-MU district.

In the TC-MU zoning district, Commercial School, Retail, and Service uses are subject to the use restriction proposed for amendment. Gramor will propose to the City a retail use which will be larger than 50,000 square feet on a parcel larger than three net acres. Therefore, the applicant's narrative is directed primarily at retail uses.

The proposed text amendment does not eliminate the existing use requirement limiting the size of individual retail uses. The amendment will provide a property owner the opportunity to enter into a development agreement with the City to develop an use which is subject to the use restriction. The amendment does not place an obligation on the City to enter into a development agreement with any party. Entering into such an agreement is at the sole discretion of the City Council.

The Commission should consider the fact that State Statute places a life span on development agreements when deliberating the proposed text amendment. If the City were to enter into a development agreement for a commercial school, retail, and/or service use in the TC-MU zoning district, the parties to the agreement could have up to 15 years to meet those expectations. The question to consider is what happens if the performance expectations are not met? Section 10.70.9 of the Development Code states that the City will notify the party is in breach or default of the agreement and then may deny any application for land use or building permits on the subject property because of the breach or default of the development agreement. Is that enough of an enforcement tool or is it too severe? For example, a development agreement requires the provision of a minimum amount of parking and the other party provides something less than the minimum amount in the agreement. The other party is content with the amount of parking, does not intend to provide the additional parking, and the development agreement expires. The City would rely on Section 10.70.8 and not issue any additional land use or building permits. If the other party is content with the amount of development on the site, then the withholding of permits would not be an inducement to meet the performance expectations of the development agreement.

The Commission should also consider the potential for altering the vision of Town Centers in Beaverton. Development Code Section 20.20.30 and the other portions of the TC-MU zoning standards were developed with the help of private sector consultants in order to create the best place with the community's vision for the Murray Scholls Town Center. Further, the proposed amendment will be applicable to the TC-MU zoning district on the Teufel Nursery site which went through the public visioning process with Washington County prior to annexation.

D. FACTS AND FINDINGS - Conformity to Text Amendment Approval Criteria

Section 40.03. of the Development Code states that Type 4 applications are subject to the Facilities Review Committee approval criteria contained in Section 40.03.1 through 11. Therefore, the decision making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.03.1 through 11 are satisfied. The applicant has prepared a response to these approval criteria in their narrative which was attached to the staff report prepared for the January 11, 2006 Commission hearing. Staff do not have anything to add to the applicant's suggested findings to the approval criteria found in Section 40.03.1 through 11. The applicant's findings for Section 40.03.1 through 11 are found on pages 5 through 8 of their text amendment narrative materials.

In order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1 through 7 are satisfied. The applicant has prepared a response to these approval criteria in their narrative which was attached to the staff report prepared for the January 11, 2006 Commission hearing. Staff do not have anything to add to the applicant's suggested findings to the approval criteria found in Section 40. 85.15.1.C.1 through 7. The applicant's findings are found on pages 8 through 28 of their text amendment narrative materials.

F. CONFORMANCE WITH STATEWIDE PLANNING GOALS

The staff report prepared for the January 11, 2006 Planning Commission hearing summarizes staff's conclusions about the proposal's ability to conform with the Statewide Planning Goals. Staff have no further comments regarding this subject for the Commission's consideration. Therefore, staff incorporate the discussion contained in that report by reference in this report.

G. STAFF OVERVIEW OF PROPOSED DEVELOPMENT AGREEMENT

Pursuant to the proposed text amendment, Gramor has submitted a proposed development agreement for the development of an approximately 14 acre parcel at the NW corner of the intersection of Barrows Road and Horizon Boulevard. The site is zoned TC-MU and if TA 2004-0012 is approved, Gramor could enter into a development agreement with the City to develop the site with an individual retail use larger than 50,000 square feet and on a parcel larger than three (3) acres. Gramor has submitted the development agreement and an accompanying justification narrative for the Commission's consideration.

The City Council has the sole authority within the City to enter into any development agreement. Because the proposed text amendment is accompanied by a proposed development agreement, the Mayor has requested that the Planning Commission review the development agreement and provide a recommendation to the City Council on the proposed agreement. Since April 2005, staff have discussed the content of the proposed development agreement with Gramor and their representatives. The development agreement only applies to the parcel north of Barrows Road. The graphics attached to the report for the January 11, 2006 Commission hearing show a parcel south of Barrows Road and show a development scheme for that parcel. The southern parcel is not a part of the proposed development agreement.

In the prior staff report, staff identified two (2) issues within the development agreement which staff could not recommend support. Gramor has responded to those issues to an extent which satisfies staff's concerns. Therefore, staff can support the proposed development agreement. There are several minor design issues with the proposed development, such as how the south facing façade of the new roof structure will be addressed. However, staff characterize these questions as minor issues which can be deferred to the quasi-judicial land use process.

Some additional points for the Commission's consideration.

- ◆ State statute was recently amended to allow development agreements to have a life span of up to 15 years. The proposed agreement is for seven (7) years.
- ◆ The development envisioned by the graphics in the proposed development agreement are subject to receiving a City quasi-judicial land use decision. In this case, a minimum of Conditional Use - Final Planned Unit Development and Design Review approval will be necessary.

Staff's support of this proposed development agreement does not mean all future agreements will be supported by staff. Staff support will be on a case by case basis depending on what is proposed in an agreement and how the agreement is responsive to the unique characteristics of a parcel within the TC-MU zone.

H. STAFF RECOMMENDATION(S)

Staff offer the following recommendation for the January 11, 2006 public hearing for TA 2004-0012 (TC-MU Commercial Use Restriction Amendment):

1. Open the public hearing.
2. Receive all public testimony.
3. Close the public hearing.

4. Considering the public testimony and the facts and findings presented in the staff report, deliberate on policy issues identified in the report and other issues identified by the Commission or the public.
5. Reach consensus on a recommendation on text amendment application TA 2004-0012 (TC-MU Commercial Use Restriction Amendment) and the accompanying development agreement.
6. Forward a recommendation for both the proposed text amendment and development agreement to the City Council.

I. EXHIBITS

Exhibit 1 through Exhibit 8 are attached to the staff report dated January 4, 2006 prepared for the January 11, 2006 Commission hearing. However, staff are continuing the prior exhibit reference format for letters (Exhibit 6.x) and email (Exhibit 7.x) which were received after January 4, 2006

Exhibit 6 Letter Correspondence

- 6.16 CS Panditrao dated received January 5, 2006
- 6.17 Michael Ayton dated received January 5, 2006
- 6.18 Victoria Hamilton dated received January 9, 2006
- 6.19 Frank and Carol Sampson dated received January 10, 2006
- 6.20 Shannon Fallacaro dated received January 12, 2006
- 6.21 Jack Platten dated received January 18, 2006
- 6.22 Kim Levin dated received January 20, 2006
- 6.23 Mike and Jill Fischer dated received January 24, 2006
- 6.24 Fred and Julie Barr dated received January 25, 2006
- 6.25 Vicki Fink dated received January 26, 2006

Exhibit 7 Email Correspondence

- 7.6 Michelle and Tim Burkhart dated January 5, 2006
- 7.7 Robert and Sharon Beatty dated January 9, 2006
- 7.8 Mary Conklin dated January 9, 2006
- 7.9 Alan Rappleyea dated January 19, 2006
- 7.10 Jack Platten dated January 19, 2006
- 7.11 John Schiebel dated January 19, 2006
- 7.12 Bill and Beth Trubits dated January 20, 2006

Exhibit 9 Letter from Steven Abel revising the proposed text amendment dated received January 17, 2006.

Exhibit 10 Proposed Development Agreement dated February 1, 2006

Exhibit 11 Correspondence from Matt Grady explaining the revised graphics dated January 20, 2006

Exhibit 12 Revised Development Agreement Graphics Exhibit